

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application No.5430 of 1992
with
Special Civil Application No.5452 of 1992
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For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?-No.
2. To be referred to the Reporter or not?-No.
3. Whether Their Lordships wish to see the fair copy of the judgement?-No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.
5. Whether it is to be circulated to the Civil Judge?-No.

JAYANT P BHATT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No.5430 of 1992 :
PARTY-IN-PERSON for Petitioners
Mr.J.M. Thakore, Advocate General, with
Mr.S.J. Dave, AGP, for respondent No.1.
Mr.J.R. Nanavaty, Advocate, for respondent No.2.

2. Special Civil Application No.5452 of 1992 :

MR SV PARMAR, Advocate, for Petitioner.
Mr.J.M. Thakore, Advocate General, with
Mr.S.J. Dave, AGP, for respondent No.1.
Mr.J.R. Nanavaty, Advocate, for respondent No.2.
Respondent No. 3 is deleted.

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and

Date of decision: 06/11/98

ORAL JUDGEMENT: (Per K.G. Balakrishnan, C.J.)

Both these Special Civil Applications are public interest litigations. Shri B.S. Nirula, Second respondent in Special Civil Application No.5430 of 1992, was appointed as the President of the Gujarat Civil Services Tribunal in the State of Gujarat. At the time of appointment, the 2nd respondent was a retired Director General of Police. The appointment was made for a period of three years as per Section 3 of the Gujarat Civil Services Tribunal Act, 1972. The 2nd respondent assumed office of the President of the Gujarat Civil Services Tribunal on 17th August, 1992. It is alleged by the petitioner that the 2nd respondent, being a retired Police Officer, should not have been appointed as the President of the Gujarat Civil Service Tribunal, and according to him, a Judicial Officer should have been appointed. By way of amendment, the petitioner has also urged an additional ground that the post of President of the Tribunal shall be treated as a Judicial Post and that the selection and appointment shall be by a Committee headed by the Chief Justice of the High Court or a Sitting Judge of the High Court.

In Special Civil Application No.5452 of 1992, it is contended that the President of the Gujarat Civil Services Tribunal was one Soyantar and on completion of his period of three years as President of the Tribunal, the 1st respondent should have reappointed him for a further period of three years. It is contended by the petitioner that Soyantar is a member of the Scheduled Caste community and on two previous occasions, one Mr.H.T. Sadhwani and Mr.G.C. Bareja were appointed at the first instance for a term of three years and they were reappointed for another period of three years and this precedent was not followed in the case of Soyantar and in his place, 2nd respondent Nirula was appointed. This, according to the petitioner, is highly discriminatory and violative of Section 3(2) of the Gujarat Civil Services Tribunal Act and Rules and the petitioner in this Special Civil Application prays that there shall be an appropriate writ or direction to quash the appointment of the 2nd respondent Nirula and that there shall be a direction to reappoint T.D. Soyantar as the President of the Tribunal.

When these two matters came up for consideration, counsel on either side admitted that Shri Nirula assumed

office as President of the Tribunal in August, 1992 and he continued in office till August, 1995 and he ceased to hold the office of the President of the Gujarat Civil Services Tribunal. It is also admitted that Shri Nirula was not given any extension and, in his place, another person was appointed as the President of the Gujarat Civil Services Tribunal. Hence, the main prayer sought for in Special Civil Applications Nos. 5430 of 1992 and 5452 of 1992 have become infructuous. However, the counsel for the petitioner in Special Civil Application No.5452 of 1992 Shri Parmar strenuously contended before us that the authoriti...

Soyantar and he was entitled to get reappointment for a further period of three years. The argument is based on Rule 3 of the Gujarat Civil Services Tribunal (Conditions of Service of President and Members) Rules, 1973. Rule 3(2) states as under :-

"... A person who has held office as President or a Member for the period mentioned in sub-rule (1) shall be eligible for reappointment unless he has attained the age of 65 years...."

At the time when Soyantar relinquished his office as the President of the Tribunal, he had not attained the age of 65 years and he could have been reappointed as per Rule 3(2) of the Gujarat Civil Services Tribunal (Conditions of Service of President and Members) Rules, 1973. However, it may be noted that Rule 3(2) is only an enabling provision and it does not give any right to the incumbent who holds office of the President of the Tribunal for getting appointment for a further period of three years. The authorities, for valid reasons, can refuse to invoke Rule 3(2) and can decline reappointment to a President. It is also not correct to say that invariably the President of the Tribunal was being given reappointment. Even in the case of Shri Nirula, the authorities declined to give him reappointment. As the reliefs sought for in Special Civil Application No.5452 of 1992 have become infructuous, this Special Civil Application has only to be dismissed and we do so, however, without costs.

In Special Civil Application No.5430 of 1992, counsel for the petitioner contended that the post of President of the Gujarat Civil Services Tribunal is to be treated as a judicial post and that the appointment to this post shall only be done in consultation with the Chief Justice of the High Court. The counsel drew

analogy from the decision in *The State of Maharashtra v. Labour Law Practitioners' Association and others*, AIR 1998 SC 1233, wherein the Supreme Court held that the persons presiding over Industrial and Labour Courts are members of the State Judicial Service and, therefore, appointment of Labour Court Judges is governed by Article 234 of the Constitution. We do not think that in this Special Civil Application, this question shall be considered. It is an accepted position of law that if pronouncement on a question is not necessary for the just disposal of the case, the Court shall not venture to do so. This dictum has been laid down as early as in 1959, in *Basheshar Nath v. Commissioner of Income Tax*, AIR 1959 SC 149. It was held by the Supreme Court that the Court should not make any pronouncement on any question, which is not strictly necessary for the disposal of the particular case before it. Though this observation was made while considering a petition under Article 32 of the Constitution, the same is equally applicable to the High Courts when considering applications filed under Article 226 of the Constitution of India. As all the reliefs sought for by the petitioner in Special Civil Application No.5430 of 1992 have become infructuous, we do not find it necessary to decide the question whether the post of President of the Gujarat Civil Services Tribunal should be considered as "judicial Post" and that the appointment shall be done in consultation with the High Court of Gujarat. We leave open this question to be decided at a later stage in an appropriate case.

As the reliefs sought for in these two petitions have become infructuous, they are accordingly dismissed. Notice issued in Special Civil Application No.5430 of 1992 is discharged and ad interim relief granted therein is vacated. No costs. Rule issued in Special Civil Application No.5452 of 1992 is discharged and status quo order granted therein is vacated. No costs.

(apj) ****